



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCB/145368

PRELIMINARY RECITALS

Pursuant to a petition filed November 20, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Early Care Administration (MECA) in regard to Child Care, a hearing was held on December 20, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly discontinued Petitioner's child care because she is not in an approved activity; specifically, qualified employment earning at least the minimum wage.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Theresa Miles
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was notified that her child care benefits were being discontinued because her employment was not with a qualified employer; specifically, that she was not making the minimum wage.

3. Petitioner is employed and earns \$7.25 per hour and works a 36 hour week. This is \$1122.30 per month (\$7.25/hr. x 36 hr./wk. x 4.3 weeks per month). Petitioner has worked at this employer for five years. The employer is a restaurant and Petitioner's pay does include tips.
4. In determining that Petitioner was not making minimum wage the agency used a 40 hour workweek for computing her income.

DISCUSSION

In order to qualify for child care benefits parent must be an approved activity. *Wisconsin Shares Childcare Manual (Manual) §1.4.8*. Unsubsidized employment is approved activity provided a parent is earning at least the minimum wage. *Manual, §1.5.3.1*.

Here the agency reviewed Petitioner's paychecks and divided her weekly earnings by 40 hours and concluded that she was not earning the minimum wage of \$7.25 per hour. In fairness to the agency it is noted that the employer does not report the number of hours worked per pay period on the paychecks. Nonetheless, Petitioner testified credibly that she works a 36 hour per week and brought a current paystub upon which the employer noted the number of hours per week that Petitioner works. The employer noted 36 hours per week. At 36 hours per week Petitioner earns precisely \$7.25 per hour. In reviewing a number of Petitioner's paystubs it is apparent that if you divide the income by a 36 hour work week she does make the minimum wage to \$7.25 per hour each week. I note that restaurants are required to pay the minimum wage albeit through a combination of the hourly wage plus tips. In addition to finding Petitioner credible; I do not believe that the employer, here a restaurant that has been in business for some period of time, would disregard the law requiring payment of the minimum wage of \$7.25 per hour. I am, therefore, concluding that Petitioner's child care benefits must be restored backdated to the date of the discontinuance.

CONCLUSIONS OF LAW

That the available evidence indicates that Petitioner does work a qualified employment as she is earning the minimum wage of \$7.25 per hour; there for her child care benefits were incorrectly discontinued.

THEREFORE, it is

ORDERED

The matter is remanded to the agency with instructions to restore Petitioner childcare backdated to the date that benefits were discontinued. This must be done within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

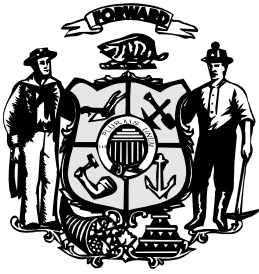
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of January, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 16, 2013.

Milwaukee Enrollment Services
Child Care Benefits